

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA; STATE
OF NEW YORK; AND BASIL SEGGOS, AS
COMMISSIONER OF THE NEW YORK
STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Plaintiffs,

No. 18 Civ. 5845 (CS)

v.

CITY OF MOUNT VERNON,

**[PROPOSED] FIFTH REMEDIAL
ORDER SUSPENDING CERTAIN
REMEDIAL FINES**

Defendant.

CATHY SEIBEL, United States District Judge:

WHEREAS, this Court previously entered orders dated September 21, 2020 (ECF No. 74), March 10, 2021 (ECF No. 90), and June 22, 2021 (ECF No. 97), setting forth compliance deadlines for defendant City of Mount Vernon (the “City”);

WHEREAS, this Court’s June 22, 2021 Order (the “Third Remedial Order”), ECF No. 97, provided for remedial fines to be paid by the City in the event of future violations of Court-ordered deadlines contained in the Court’s Orders;

WHEREAS, pursuant to the Third Remedial Order, Plaintiffs filed a Notification of Violation on August 2, 2021, pursuant to paragraph 29 of the Third Remedial Order, identifying four separate violations and stating the amount of remedial fines owed and that remedial fines would continue to accrue until the violations were corrected, *see* ECF No. 98;

WHEREAS, this Court thereafter entered an Order Regarding Remedial Fines for Missed Deadlines in Connection with the August 2, 2021 Notification of Violation, dated August 16, 2021, requiring the remedial fines described by Plaintiffs to be paid, *see* ECF No. 101;

WHEREAS, as of August 31, 2021, the City satisfactorily completed one of the violations contained in the August 16, 2021 Order (failure to purchase clamshell equipment);

WHEREAS, the City has not met the deadlines for an Illicit Discharge Action Plan, due June 30, 2021, Outfall Reconnaissance Inventory, due June 30, 2021, an Updated Storm Water Management Plan, due July 30, 2021, and a Sewer System Evaluation Survey, due July 30, 2021, as set forth in paragraphs 1 through 4 of the Third Remedial Order, *see* ECF No. 97, and remedial fines for the violations regarding the failure to submit an Illicit Discharge Action Plan and failure to complete the Outfall Reconnaissance Inventory continue to accrue;

WHEREAS, the City has represented that it is contracting with Arcadis of New York, Inc. (“Arcadis”) to perform the work identified in paragraphs 1 through 3 of the Third Remedial Order and to prepare a workplan for the Sewer System Evaluation Survey required by paragraph 4 of the Third Remedial Order; and

WHEREAS, Plaintiffs have concluded that the work contemplated to be performed by Arcadis is “work reasonably designed to achieve and maintain compliance with” paragraphs 1, 2, 3, and 4 of the Court’s Third Remedial Order, and on December 1, 2021, provided their written consent for the City to use currently escrowed funds (up to \$138,500) to allow for the contracted work, *see* ECF No. 97 ¶¶ 1-4, 33.

NOW, THEREFORE, it is hereby ordered as follows:

Further Revised Deadlines

1. By March 17, 2022, Defendant shall complete MS4 Outfall Reconnaissance Inventory in accordance with the 2015 MS4 General Permit. Outfall Reconnaissance Inventory shall include, but is not limited to, the following:

- a. By March 17, 2022, complete visual, on the ground, inspection of all MS4 outfalls during dry weather (after at least 48 hours of no precipitation) and

during peak sanitary flow hours (in the early morning or evening), for any outfalls for which such inspection has not yet occurred as provided by the Court’s prior orders. The visual inspection shall include photographic documentation and a written description of observations including any flow observed coming from the outfall utilizing a standard inspection form.

- b. At the time of inspection, sample any observed dry weather flow at the outfall(s) and/or other structures and analyze for bacterial content.
- c. By March 17, 2022, if dry weather flow is observed at the time of inspection, Defendant shall conduct track-down in accordance with the 2015 MS4 General Permit to narrow down and identify the source of flow. Defendant shall document all observations using appropriate forms in accordance with the MS4 General Permit.

2. By June 17, 2022, Defendant shall develop and submit for U.S. Environmental Protection Agency (“EPA”) approval an Illicit Discharge Action Plan designed to eliminate all identified sources of illicit discharges for the Currently Identified Impaired Outfalls based on Defendant’s analysis that prioritizes elimination of illicit discharge. *See ECF No. 74 ¶ 6* (setting original deadline of March 22, 2021); ECF No. 97 (setting revised deadline of June 30, 2021). *See ECF No. 74 ¶ 12* (setting original deadline of March 22, 2021); ECF No. 97 (setting revised deadline of June 30, 2021).

3. By June 17, 2022, Defendant shall develop an updated SWMP, as one comprehensive document, in accordance with Part IV of the 2015 MS4 General Permit, for EPA approval. Upon approval by EPA, Defendant shall immediately commence implementation of the SWMP. *See ECF No. 74 ¶ 17* (setting original deadline of March 22, 2021); ECF No. 97 ¶ 3 (setting revised deadline of July 30, 2021).

4. By June 17, 2022, Defendant shall submit to the Environmental Protection Agency and New York Department of Environmental Conservation for approval a workplan for a Sewer System Evaluation Survey of the sanitary sewer system to identify each condition in the sanitary sewer system that could lead to a discharge of sewage to the Mount Vernon MS4. *See*

ECF No. 74 ¶ 19 (setting original deadline of March 22, 2021); ECF No. 97 (setting revised deadline of July 30, 2021). Upon obtaining approval, the City shall implement the Sewer System Evaluation Survey pursuant to the schedule contained in the approved workplan. During the course of the evaluation, if the City identifies a potentially blocked sewer segment, the City must investigate, respond to, document and alleviate the sanitary sewer blockage, as specified in Section 6 of the City's CMOM. *See* ECF No. 74 ¶ 18 ("Defendant shall implement the EPA-approved CMOM citywide. . .").

Reporting on Work Performed by Arcadis

5. The City shall include a description of the status and progress of Arcadis's work related to paragraphs 1 through 4, above in the City's monthly reports to EPA and DEC required by paragraph 25 of the Court's Third Remedial Order, ECF No. 97.

6. EPA and DEC are permitted to communicate with Arcadis directly regarding the work it performs related to paragraphs 1 through 4 above.

Suspension of Certain Remedial Fines Beginning September 29, 2021

7. The Court suspends the obligation to pay remedial fines accrued or that will accrue pursuant to the Third Remedial Order on or after September 29, 2021, for failure to timely complete an Illicit Discharge Action Plan, an Outfall Reconnaissance Inventory, an Updated Storm Water Management Plan, and a Sewer System Evaluation Survey. Although the obligation to pay is suspended, remedial fines will continue to accrue for these violations as provided in the Third Remedial Order.

8. If the City takes the actions described in paragraphs 1 through 4 above, the suspended remedial fines will be discharged without payment.

9. If the City fails to meet the deadlines described in paragraph 1 through 4, the period of suspension will end, and all remedial fines accrued will be due as provided in the Third Remedial Order.

10. Nothing in this order affects any remedial fines that may be due for violations of the Court's orders other than failure to timely complete an Illicit Discharge Action Plan, an Outfall Reconnaissance Inventory, an Updated Storm Water Management Plan, and a Sewer System Evaluation Survey.

SO ORDERED.

Dated and entered this 27th day of January 2022



CATHY SEIBEL
UNITED STATES DISTRICT JUDGE